In the High Court of Judicature for Rajasthan
At
Jaipur Bench, Jaipur

J U D G M E N T

In

S.B. Criminal Appeal No.1689/2003
Prakash Verma Vs. State of Rajasthan

Date Of Judgment :: 26.9.07

Hon'ble Mr. Justice Jitendra Ray Goyal

Mr. R.L. Agarwal, counsel for appellant.
Mr. Jainendra Jain, Public Prosecutor for State.

.....

By the Court :-

Instant appeal has been filed against the judgment and order dated 16/10/2003 passed by Additional Sessions Judge (Fast Track), Behror in Sessions Case No.50/2003 whereby appellant Prakash Verma was convicted for the offences under sections 392 & 397 IPC and sentenced as under:-

Under section 392 IPC :- Ten years rigorous imprisonment and fine; in default of payment of fine to further undergo one year simple imprisonment.

Under Section 397IPC : - Ten years rigorous imprisonment and fine; in default of payment of fine to further undergo one year simple imprisonment.

2. Brief facts giving rise to the present appeal are that

on 8/3/2003 at about 6:20 pm, Sub-Inspector Onkar Singh, SHO, Police Station Shahjanpur along with other police officials laid a picket (NAKA) for checking the vehicles on Delhi-Jaipur road. At about 6:45 pm, a Qualis vehicle No.RJ-27-1C/3403 came from Delhi side. Seeing the police party, the driver of that vehicle speeded up the vehicle towards the approach road leading to town Shahjanpur. On suspicion, the vehicle was chased and got stopped. The vehicle was being driven by accused Ajit Singh (declared proclaimed offender) and the present appellant Prakash Verma was sitting in the vehicle. The documents of the vehicle were checked. The driving license belonged to Hanuman Sahai (since deceased) whereas the registration certificate of the vehicle was found to be in the name of Likhma Ram (brother of the deceased). On interrogation, both the accused disclosed that they had hired the said vehicle on 7/3/2003 from Jaipur and they left Jaipur at 9:45 pm for going to Delhi Airport. The vehicle was being driven by Hanuman Sahai (since deceased). At about 1/1:30 am (night) when they reached near village Bawal (Haryana State) on National Highway No.8, they asked the driver (Hanuman Sahai, deceased) to take the vehicle to the

approach road leading to village Harchandpur, as the sister of accused Ajit Singh was married in that village. After covering a distance of about one and half Kilometer, the accused got stopped the vehicle on the pretext of urination. Deceased Hanuman Sahai driver also got down. Appellant Prakash Verma caught hold of the deceased whereas accused Ajit Singh gave knife blows and threw him in the Sarson (mustard) field. Thereafter they took the vehicle and went to village Bhankli where in-laws of accused Ajit Singh were residing. On 8/3/2003 at about 4:30 pm (Evening) they started their back journey for Jaipur. They disclosed that Likhma Ram (now complainant) was the brother of the deceased. The police gave information to said Likhma Ram and registered FIR for the offence under section 411 of the Indian Penal Code.

3. Police seized the vehicle Qualis No.RJ-27-1C/3403 and on the information given by the accused persons under section 27 of the Evidence Act they demarketed the place where dead body of driver Hanuman Sahai was thrown after his murder in a mustard field in the area of Harchandpur and since the area fell in the jurisdiction of Police Station Bawal,

Hayarana, therefore, necessary information was sent to that Police Station which separately registered the case of murder of deceased Hanuman Sahai against the appellant Prakash and co-accused Ajit Singh. After usual investigation, Police Shahjanahpur filed the charge-sheet for the offence under sections 392, 397 & 411 of the Indian Penal Code and in turn the case was committed to Additional Sessions Judge, Behror and thereafter it was transferred in the court of Additional Sessions Judge (Fast Track), Behror.

4. Charges were framed against the appellant and co-accused Ajit Singh for the offence under sections 392 & 397 IPC. They denied the charges and claimed trial. Prosecution examined as many as 8 witnesses in support of its case and 19 documents were exhibited. Statements under section 313 of the Code of Criminal Procedure were recorded wherein it was stated by the accused persons that they have falsely been implicated and one another case of the same incident has also been registered in Police Station Bawal, District Jhawari. However, no evidence in defence was produced by the appellant. At the fag end of the trial co-accused Ajit Singh absconded from the judicial custody and he was declared

absconder by the trial court on 8/10/2003.

5. After hearing both the parties, trial court convicted and sentenced the appellant as stated here-in-above.

6. I have heard learned counsel for the appellant, learned Public Prosecutor for the State and perused the entire record carefully.

7. The first contention of the counsel for the appellant was that even according to the prosecution case the offence of robbery and murder has been committed in the area of village Harchandpur within the jurisdiction of Police Station Bawal (Haryana) and the FIR was also registered for that offence in that Police Station, therefore Police Station Shahjahanpur was not having any jurisdiction to investigate and as such trial conducted by the Additional Sessions Judge, Behror was also without jurisdiction.

8. I have given my thoughtful consideration on this submission. In the instant case, the vehicle (qualis) no.RJ-27-1C/3403 which was subject matter of robbery was seized on the national highway within the jurisdiction of Police Station Shahjahanpur from the possession of appellant Prakash Verma and other co-accused Ajit Singh and on inquiry it came

out that Hanuman Sahai (since deceased), driver of the vehicle was murdered near village Harchandpur and his dead body was thrown in the mustard field and after robbing the vehicle they ran away from the place of occurrence and while returning to Jaipur in that vehicle, on suspicion, police party of Police Station Shahjahanpur intercepted and seized the vehicle. It is also evident that Police Shahjahanpur initially registered the FIR for the offence under section 411 IPC and thereafter charge-sheet was filed under sections 392, 397 & 411 IPC. In the above factual scenario, it would be relevant to have a look on the provision of section 181 of the Code of Criminal Procedure which reads as under :-

> **181. Place of trial in case of certain offences.** (1) Any offence of being a thug, or murder committed by a thug, of dacoity, of dacoity with murder, of belonging to a gang of dacoits, or of escaping from custody, may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the accused person is found.
> (2) Any offence of kidnapping or abduction of a person may be inquired into or tried by a Court within whose local jurisdiction the person was kidnapped or abducted or was conveyed or concealed or detained.
> (3) Any offence of theft, extortion or

> robbery may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the stolen property which is the subject of the offence was possessed by any person committing it or by any person who received or retained such property knowing or having reason to believe it to be stolen property.
> (4) Any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained,or was required to be returned or accounted for, by the accused person.
> (5) Any offence which includes the possession of stolen property may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the stolen property was possessed by any person who received or retained it knowing or having reason to believe it to be stolen property.

9. From the perusal of above provisions, it is manifestly clear that any offence of theft, extortion or robbery may be inquired into or tried not only within the jurisdiction where the offence was committed but also where the stolen property which is subject matter of the offence was possessed by any person committing it or by any person who has received or retained such property. Since in the fact situation

of the present case when the subject matter of the offence vehicle No.RJ-27-1C/3403 was seized within the police jurisdiction of Police Station Shahjahanpur, therefore Police Station Shahjahanpur has got the jurisdiction to register the FIR and investigate the case and as such the submissions in regard to the jurisdiction advanced by the counsel for the appellant appears to be without any force. There is no dispute that one FIR No.32 under section 302 & 404 IPC was registered in Police Station Bawal on 9/3/2003 at 4:15 am in regard to the incident took place near village Harchandpur (Haryana) in the middest night of 7-8 of March, 2003 but in the present case FIR was registered on 8/3/2003 for the offence under section 411 IPC prior to registration of the FIR in Police Station Bawal, therefore subsequent FIR registered at Police Station Bawal does not affect the present case.

10. It was next contended by the counsel for the appellant that there is no direct evidence against the appellant and the circumstances relied upon by the prosecution does not connect him with the offence charged and merely because the appellant Prakash Verma was found sitting in the vehicle, presumption cannot be drawn that he

has committed the offence of robbery in regard to that vehicle. It was further contended that the trial court has taken the support of the statement of prosecution witness Mohan Lal (PW7) recorded under section 161 of the Code of Criminal Procedure, which is contrary to the principles of natural justice and criminal jurisprudence. It was also contended that information taken down under section 27 of the Evidence Act does not extend any help to the prosecution since nothing has been recovered on that information. Reliance was placed on **State of Haryana Vs. Ram Singh**, reported in **(2002) 2 Supreme Court Cases 426**.

11. Learned Public Prosecutor supported the impugned judgment and contended that after proper appreciation of evidence the trial court correctly found the appellant guilty for the offence under sections 392 & 397 IPC.

12. I have pondered over the submissions. I fully agree with the submission advanced by the counsel for the appellant that statement of a witness recorded under section 161 of the Code of Criminal Procedure is not a substantial piece of evidence and the same cannot be used as corroborative piece of evidence, but so far factual matrix of this case is concerned,

from the unimpeachable evidence of Onkar Singh Meena (PW8), SHO Police Station Shahjahanpur, Ramanand Sharma (PW1), Head Constable, Police Station Shahjahanpur and Ram Charan (PW2) who was working as a constable at Police Station Shahjahanpur, it is amply proved that on 8/3/2003 at about 6:50 pm Onkar Singh Meena (PW8), SHO Police Station Shahjahanpur along with other officials was on routine checking of the vehicles on the high way and at about 6:45 pm the police party on suspicion tried to stop the Toyota vehicle no.RJ-27-1-C/3403 which was coming from Delhi side and going towards Jaipur but the driver diverted his vehicle towards approach road leading to Shahjahanpur town then the police party chased the vehicle and got it stopped; on inquiry the driver disclosed his name as Ajit (declared proclaimed offender) and the other person sitting in the vehicle disclosed his name as Prakash (appellant); on further inquiry both the accused disclosed that they are not the owner of the vehicle but the said vehicle was taken on hire through Rama Travels, Jaipur at the rate of Rs.4.45/- per kilometer for going to Delhi which was driven by the driver Hanuman Sahai; it was further proved that said vehicle was seized vide

seizure memo Ex.P1 and on checking of the papers of the vehicle the driving license was found to be in the name of deceased Hanuman Sahai and the registration certificate and the insurance cover were in the name of his brother Likhmaram, which were also seized; it was further proved that both the accused persons gave the information under section 27 of the Evidence Act and in pursuance of that information appellant Prakash and co-accused Ajit led the police party and demarketed the place from where dead body of the deceased Hanuman Sahai was recovered by Ajeem Khan (PW5), SHO Police Station Bawal (Haryana) who reached at the spot on receiving the information from Police Station Shahjahanpur, thereafter he registered a case under sections 302 & 404 IPC against the appellant and other co-accused. It would be relevant to mention here that the place of occurrence from where the dead body was found and recovered was first of all discovered only on the information under section 27 of the Evidence Act given by the appellant, therefore the judgment rendered in **State of Haryana Vs. Ram Singh's case (supra)** relied upon by the counsel appearing for the appellant does not help him since in cited

case fact was already discovered from another source, therefore it was held that information given subsequently by the accused under section 27 of the Evidence Act relating thereto cannot be said to be discovery.

13. In the instant case, it has also been proved by the evidence of Dr. Ranvijay (PW3) who conducted the autopsy on the body of deceased Hanuman Sahai that he died due to excessive bleeding on account of the injuries sustained by him. From the evidence of Likhma Ram (PW6), brother of the deceased, this fact was also proved that he was the owner of the qualis vehicle no.RJ-27-1C/3403 which was used to be driven by his younger brother Hanuman Sahai and according to his statement, on 7/3/2003 the vehicle was hired by two persons through Mohan Lal of Rama Travels for going to Delhi Airport and on the same day deceased Hanuman Sahai started from Jaipur along with those two passengers for Delhi and when the vehicle did not return till next day, he contacted Mohan Lal, owner of Rama Travels who after inquiry told him that the flight had been delayed, therefore the vehicle along with his brother Hanuman Sahai was held up; he further proved that on that day i.e. 8/3/2003 in the evening at about

7:30 pm he received a telephonic call from Shahjahanpur Police Station and was inquired about his vehicle and number of the passengers boarded in it, on that he replied that his brother took the vehicle along with two passengers for Delhi, thereafter he was informed that his brother was not there in the vehicle and he has been murdered. On the critical analysis of the prosecution evidence following circumstances are found proved :-

(i) Two persons hired the vehicle (qualis) no.RJ-27-1C/3403 on 7/3/2003 at Jaipur and the said vehicle was driven by deceased Hanuman Sahai who started along with two passengers from Jaipur in that evening for the destination of Delhi Airport.

(ii) The said vehicle coming from the side of Delhi and going towards Jaipur was intercepted by the police at the national highway at Shahjahanpur on 8/3/2003 at 6:45 pm, which was driven by Ajit Singh (declared proclaimed offender) and the appellant was sitting besides him.

(iii) On the signal given by the police to stop the vehicle, the driver of the vehicle diverted his vehicle towards the approach road leading to Shahjahanpur and tried to run away.

(iv) appellant Prakash also gave an information and disclosed about the place of incident and leading to the police party and demarketed the place of occurrence.

(v) On the information given by the Police Station Shahjahanpur, SHO Police Station Bawal (Haryana) reached at the spot, recovered the dead body and also prepared the site-plan.

(vi) Deceased Hanuman Sahai died on account of excessive bleeding due to the injuries sustained by him.

(vi) Within a period of 24 hours of the offence of murder and robbery, the vehicle, subject matter of the offence, was recovered from the possession of the accused persons at national highway near Shahjahanpur.

14. Having regard to the various proved facts including the fact that within a period of 24 hours of occurrence the robbed vehicle was seized from the possession of the appellant and co-accused and appellant could not offer any reasonable explanation how he came in the possession of that vehicle, coupled with the fact that on the information given under section 27 of the Evidence Act by the appellant he demarketed the place of occurrence from where dead body of

the deceased was also recovered by SHO, Police Station Bawal (Haryana), therefore in my considered view it is a fit case where presumption under section 114 of the Evidence Act could be drawn that appellant was one of the person who committed the offence of robbery after causing to deceased grievous hurt by deadly weapon. In support of the above findings reliance may be placed on the judgment delivered in **Mukund Vs. State of M.P.,** reported in **(1997) 10 S.C.C. 130.** Similar view has been taken in **Shri Bhagwan Vs. State of Rajasthan,** reported in **(2001) 6 Supreme Court Cases 296**.

15. In view of the discussion made here-in-above, I do not find any infirmity or illegality in the impugned judgment passed by the trial court. Accordingly, the impugned judgment passed by the trial court is upheld and the conviction and sentence awarded to the appellant by the trial court are maintained.

16. With the above observations, this appeal is hereby dismissed.

(J.R. Goyal),J.

VS Shekhawat/-
Jr.P.A.